

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0353 ST  
SALES TAX

FOR TAX PERIOD: 1994 AND 1995

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

**I. Sales Tax: Damage Waiver Fees**

**Authority:** IC 6-2.5-4-10; 45 IAC 2.2-4-27.

Taxpayer protests the imposition of sales tax on damage waiver fees collected from lessees of tangible personal property.

**II. Tax Administration: Penalty**

**Authority:** IC 6-8.1-6-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

The taxpayer is a corporation doing business in Indiana. Taxpayer leases consumer goods on a short-term basis, usually for one week or one month. After a contractually specified number of renewals, the lessee can acquire title. Before that time, title remains with the taxpayer. Under terms of the rental contract, the lessee bears the risk of loss should anything happen to the property being rented. Taxpayer does offer, for an additional fee, a damage waiver that would cover the lessee's risk of loss for certain named perils. The Department completed an audit of Taxpayer in May of 1997 and assessed sales tax for tax years 1994 and 1995, based on taxpayer's failure to collect and remit sales tax on monies collected as fees for the damage waiver. Taxpayer protests this assessment. Additional facts will be stated as warranted.

DISCUSSION

Taxpayer argues that the damage waiver fees are part of a completely separate and distinct agreement between the taxpayer and the lessee of goods. As such, Taxpayer contends that the transaction falls outside the scope of 45 IAC 2.2-4-27. Taxpayer's position is that a lessor of tangible personal property is only required to collect and remit the gross retail tax "on the amount of actual receipts from the rental." 45 IAC 2.2-4-27(b). "Actual amount of receipts" is defined as:

The gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include *any consideration received from the exercise of an option* contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals. 45 IAC 2.2-4-27(d)(1). (*Emphasis added*)

Taxpayer argues that because the damage waivers are transactions, separate and distinct from the rental itself, the monies collected are outside the definition provided in the Administrative Code.

The Department does not agree. The Department, after examining both the rental contract and the damage waiver document, concludes that the damage waiver is not a separate and distinct transaction. Instead, it is an option within the definition of actual receipts under 45 IAC 2.2-4-27(d)(1). The wording of the damage waiver itself supports this conclusion:

As you read through this *addendum*... (*Emphasis added*). (Taxpayer's exhibit 1-b).

The language clearly indicates that the damage waiver is a modification of the rental contract. Taxpayer even explains that this *addendum* modifies the rights of both parties as they exist under the rental contract. The taxpayer now bears the risk of loss for certain perils, and the lessee is indemnified. The addendum clearly modifies section seven of the rental purchase agreement. (Taxpayer's exhibit 1-a). Even the fee for the damage waiver is a percentage of the rate used in the original contract before modification. The damage waiver is clearly an exercisable option within 45 IAC 2.2-4-27 and, as such, is properly included in the amount of actual receipts used to compute sales tax.

FINDINGS

The taxpayer's protest on this issue is denied.

**II. Tax Administration: Penalty**

DISCUSSION

The Department can impose a ten percent (10%) negligence penalty under IC 6-8.1-10-2.1. This code section states, in pertinent part, that if “ the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty.”

Further, 45 IAC 15-11-2 states that “negligence on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary, reasonable taxpayer.”

The taxpayer must demonstrate that its actions involved the use of reasonable care, caution, or diligence, in attempting to comply with the law in order to avoid a penalty. The taxpayer has not done this with respect to its failure to collect and remit sales tax on fees charged for the damage waiver option. The taxpayer is well aware of the Department’s position on damage waivers. The Administrative Code is clear about options being included in a lessor’s receipts to compute sales tax. Finally, taxpayers own contractual language clearly puts the transaction within the regulatory definition. The taxpayer’s arguments and evidence do not show that the taxpayer exercised reasonable care, caution or diligence in its failure to have remitted the assessed tax.

#### **FINDING**

The taxpayer’s protest of the penalty is denied.